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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Laura M. Wells; Kelley L. Bradbury;
10 Morgan M. Block; Melanie Haswood;
11 Brian Gilmore; Bradley Ledford; Elie
Lahhoud; Timothy Roberts; Elizabeth
Trujillo; Devin Brennan; Dean Bausman;
William Reynolds; and Nancy Farran,

12 Plaintiffs,

13 v.

14 American Polygraph Association; Barry
15 Cushman; Charles Slupski; Pam Shaw;
16 George Baranowski; Robert Peters; Walt
17 Goodson; Jamie McCloughan; Raymond
18 Nelson; Mike Gougler; Vickie T. Murphy-
Carr; Chad Russell; Gordon L. Vaughan;
Donald Krapohl; Robbie S. Bennett;
Donnie Dutton; Lisa Jacocks; and Roy
Ortiz,

19 Defendants.
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No. CV-13-00607-PHX-GMS

ORDER

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22 Pending before the Court are several motions: Defendants' Motion to Dismiss
23 (Doc. 28), Plaintiffs' Motion to Strike Defendants' Motion to Dismiss (Doc. 29),
24 Plaintiffs' Motion to Amend (Doc. 56), Defendants' Motion to Strike Service Executed
25 (Doc. 59), and Defendants' Motion to Strike Plaintiffs' Response to Defendants' Reply
26 (Doc. 71). For the reasons discussed below, Defendants' Motion to Dismiss is denied as
27 moot, Plaintiffs' Motion to Strike is denied as moot, Plaintiffs' Motion to Amend is
28 denied as premature, and Defendants' Motion to Strike is granted.

1 Defendants have moved to strike Plaintiffs' Affidavit/Proof of Service filed on
2 June 21, 2013. (Doc. 59.) Plaintiffs' Proof of Service indicates that Plaintiffs served the
3 summons on attorney Whitney M. Harvey, whom Defendants had not authorized to
4 accept service on their behalf as of June 21, 2013. (*See* Doc. 55.) Service of a complaint
5 on an attorney is ineffective unless the attorney has specific authority to accept service.
6 *Pochiro v. Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1248–49 (9th Cir. 1987). Plaintiffs
7 object that Harvey had submitted a notice of appearance as attorney of record for all
8 Defendants on June 4, 2013. (*See* Doc. 43.) That appearance did not, however, contain
9 any express grant of authority to accept service on behalf of Defendants. The attorney-
10 client relationship by itself is insufficient to convey authority to accept service. *Kruska v.*
11 *Perverved Justice Found. Inc.*, No. CV-08-0054-PHX-SMM, 2009 WL 4041941 at *2 (D.
12 Ariz. Nov. 16, 2009). Though implied authority to accept service of process is
13 permissible in the Ninth Circuit, an agent's authority to act cannot be established solely
14 though the agent's actions; rather, the authority must be established by an act of the
15 principal. *In re Focus Media Inc.*, 387 F.3d 1077, 1082, 1084 (9th Cir. 2004). Here, there
16 is no evidence of any act by Defendants indicating that Harvey had authority to accept
17 service of process. The fact that Harvey requested copies of notices and pleadings to be
18 sent to her does not implicate Defendants, who have not by their actions or otherwise
19 given Harvey permission to accept service on their behalf. Thus, Plaintiffs' service of
20 process by mailing the Complaint to Harvey was insufficient, and Defendants' Motion to
21 Strike is granted.

22 Because Plaintiffs have not yet effectuated service on Defendants, their Motion to
23 Amend is premature, as is Defendants' Motion to Dismiss the as-yet unserved Complaint.
24 Because the Motion to Dismiss is premature, Plaintiffs' Motion to Strike the Motion to
25 Dismiss and Defendants' Motion to Strike Plaintiffs' Response to their Reply are denied
26 as moot.

27 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss (Doc. 28)
28 is **DENIED AS PREMATURE**.

